

1 IN THE DISTRICT COURT FOR CLEVELAND COUNTY

2 STATE OF OKLAHOMA

3 CASE NO. CJ-96-1499L (H)

4
5 THE STATE OF OKLAHOMA, et al.,

6 Plaintiffs,

7 vs.

8 R.J. REYNOLDS, et al.,

9 Defendants.

10 _____/

11
12
13 DEPOSITION OF DAVID GOERLITZ

14
15 Taken before Mary R. Desiderio,
16 Registered Professional Reporter, Notary Public
17 in and for the State of Florida at Large, pursuant
18 to Notice of Taking Deposition filed by the
19 Defendants in the above cause.

20
21
22
23 Monday, November 9, 1998
24 One East Broward Boulevard
25 Fort Lauderdale, Florida
12:11 - 2:41 p.m.

**CERTIFIED
COPY**

INTERIM COURT REPORTING
(800) 308-DEPS (3376)

1 Appearances:

2

On Behalf of the Plaintiffs:

3

NESS, MOTLEY, LOADHOLT, RICHARDSON & POOLE
151 Meeting Street, Suite 600
Charleston, South Carolina 29401
(803) 720-9000
BY: JODI W. FLOWERS, ESQ.

6

7 On Behalf of the Defendant R.J. Reynolds
Tobacco Company:

8

JONES, DAY, REABIS AND POGUE
901 Lakeside Avenue
Cleveland, Ohio 44114
(216) 586-7208
BY: MICHAEL NIMS, ESQ.

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I N D E X

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- - -

17 WITNESS: DIRECT CROSS REDIRECT RECROSS

18 DAVID GOERLITZ

19 By Ms. Nims 3

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P R O C E E D I N G S

- - -

Thereupon,

DAVID GOERLITZ,

being by the undersigned Notary Public first duly
sworn, responded as follows:

THE WITNESS: Yes, I do.

DIRECT EXAMINATION

BY MR. NIMS:

Q Would you state your name for the record,
sir?

A David Goerlitz.

Q And what is your current residence address?

A [DELETED]

Q Now, Mr. Goerlitz, you've been deposed at
least once before; is that correct?

A That's correct, sir.

Q And you understand that for a brief period
of time I will be asking you some questions. And I
would appreciate it if you would try hard to listen to
my question and then try and answer the question that
I ask. Can you do that?

A Yes, sir, I can.

Q Good. Thank you. Have you been deposed any
other time other than the one time that I'm aware of

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13:13:00 1 in August of 1997?

13:13:02 2 A One time, not relating to the tobacco issue.

13:13:08 3 Q Okay. And approximately when would that

13:13:10 4 have been?

13:13:10 5 A I would say five years ago, sir.

13:13:14 6 Q And just, in general, what was the nature of

13:13:16 7 the deposition?

13:13:16 8 A I was asked to give my testimony in a

13:13:22 9 lawsuit in a real estate firm where a woman had

13:13:26 10 fallen. And I came in as a fact witness since I

13:13:28 11 observed what happened.

13:13:30 12 Q Then the deposition that was taken of you in

13:13:34 13 Pennsylvania -- well, actually, I guess --

13:13:38 14 Yes, it was in Pennsylvania, Philadelphia,

13:13:42 15 taken of you in August 1997. That's the only time

13:13:46 16 you've been deposed in litigation involving tobacco

13:13:50 17 companies?

13:13:50 18 A Yes, sir.

13:13:50 19 Q Have you had an opportunity to review the

13:13:52 20 transcript of your deposition that was taken in

13:13:56 21 Philadelphia in August of last year?

13:13:58 22 A Yes, sir, I have.

13:13:58 23 Q And did you make any changes in the

13:14:04 24 transcription of that deposition after you read it?

13:14:08 25 A I don't follow what you mean, changes.

13:14:12 1 Q Sometimes -- and I don't know if this
13:14:14 2 happened or not. Sometimes the transcript is sent to
13:14:20 3 you, and you're asked to fill out an errata sheet if
13:14:22 4 you found anything in there that was in error. Did
13:14:26 5 that happen?

13:14:26 6 A No, sir.

13:14:28 7 MS. FLOWERS: For the record, we would like
13:14:30 8 to read and sign in this instance.

9 BY MR. NIMS:

13:14:32 10 Q So when you reviewed the transcript of the
13:14:36 11 deposition taken last year, it was just so you'd have
13:14:40 12 an opportunity to see what you had said?

13:14:44 13 A Yes, sir.

13:14:44 14 Q As you're here today, do you have any
13:14:50 15 recollection of when you read it wanting to change
13:14:54 16 anything that you believed had been recorded
13:14:58 17 inaccurately?

13:14:58 18 A Just pronunciation of names, for example,
13:15:04 19 instead of churner it was turner, minor little things
13:15:08 20 like that.

13:15:08 21 Q You didn't see any substantive change in the
13:15:12 22 nature of your testimony that you felt needed to be
13:15:14 23 made?

13:15:20 24 A No, sir. May I ask a question?

13:15:24 25 Q Certainly.

13:15:24 1 A Wasn't this supposed to be videotaped?

13:15:30 2 Q I think it was initially noticed to be
13:15:30 3 videotaped, but I suggested that they not videotape
13:15:36 4 it. I don't need to do that.

13:15:38 5 A Thank you.

13:15:38 6 MS. FLOWERS: Forgive me if I missed this
13:15:40 7 and he said that. Did he tell you when he read
13:15:44 8 his deposition?

13:15:46 9 MR. NIMS: No, he didn't.

10 BY MR. NIMS:

13:15:48 11 Q Did you read your deposition shortly after
13:15:50 12 it was taken?

13:15:54 13 A I read the deposition approximately two
13:15:54 14 months ago, sir.

13:15:56 15 Q Two months ago. Okay. Do you know who
13:15:58 16 provided you with a copy of your deposition?

13:16:02 17 A The Ness, Motley, Lawton Law Firm.

13:16:04 18 Q And when you got it two months ago, was that
13:16:10 19 the first time you had ever seen it?

13:16:10 20 A Yes, sir.

13:16:10 21 Q The actual written transcript?

13:16:14 22 A Yes, sir.

13:16:14 23 Q Have you ever had an opportunity to sit down
13:16:18 24 and -- well, strike that.

13:16:20 25 Was that deposition videotaped?

13:16:24 1 A Yes, sir, it was.

13:16:24 2 Q And have you ever had an opportunity to sit
13:16:26 3 down and actually watch the videotape?

13:16:28 4 A No, sir.

13:16:30 5 Q By whom are you employed today?

13:16:40 6 A I'm self-employed, sir.

13:16:42 7 Q And do you have a company that you now run?

13:16:48 8 A I'm no longer incorporated. I'm a sole
13:16:52 9 proprietor.

13:16:5210 Q And what is the nature of what you do
13:17:0011 today? I'm aware of what you were doing as of
13:17:0212 August of 1997. And I don't, you know, need to repeat
13:17:0613 what you've already said in that deposition. But just
13:17:1014 if you could tell me what you're doing today.

13:17:1215 A Same as August of 1997 with the exception of
13:17:1416 not being incorporated, I'm a tobacco educator for
13:17:1817 children in elementary, middle and high school
13:17:2418 involving quit-smoking programs, working with
13:17:2819 nonprofit organizations who are trying to provide
13:17:3020 information to young children on tobacco issues.

13:17:3421 Q Is 100 percent of the employment
13:17:3822 compensation that you receive today the result of your
13:17:4223 educational activities respecting tobacco?

13:17:4424 A No, sir.

13:17:4625 Q So what else do you do that also results in

13:17:50 1 remuneration?

13:17:50 2 A I still get involved with acting, theater,
13:18:00 3 some drama coaching, but it's minimal.

13:18:02 4 Q So the principal source of your income
13:18:06 5 remains your educational activities respecting
6 tobacco?

13:18:10 7 A Yes, sir.

13:18:10 8 Q Have you been involved in any litigation
13:18:24 9 against a tobacco company since you were deposed in
13:18:24 10 August of last year up until today?

13:18:30 11 A Other than the first deposition?

13:18:32 12 MS. FLOWERS: I'm sorry. I just wanted to
13:18:34 13 object to the form because I think it may be
13:18:38 14 vague and ambiguous. Maybe I heard you
13:18:38 15 incorrectly. But involvement in, do you mean as
13:18:42 16 a plaintiff or as a consultant or in any
13:18:44 17 fashion?

13:18:48 18 MR. NIMS: Let me rephrase the question.

19 BY MR. NIMS:

13:18:48 20 Q When you were deposed in August of 1997 the
13:18:54 21 impetus for that deposition occurring was your
13:18:58 22 submission of an expert report in a case entitled
13:19:04 23 "Steven Arch First American Tobacco Company." Was
13:19:08 24 that your understanding as well?

13:19:10 25 A Yes, sir.

13:19:10 1 Q Other than the Arch case in which you
13:19:16 2 submitted an expert report and you were deposed and
13:19:22 3 this case which brings you to Florida today for this
13:19:24 4 deposition, have you had discussions with attorneys
13:19:26 5 with respect to possible testimony in any other
13:19:30 6 tobacco case?

13:19:32 7 A I'm a little confused. But the best way I
13:19:38 8 can answer that was my congressional testimony in 1989
13:19:40 9 which I'm not sure if that's litigation or not, sir.

13:19:44 10 Q Okay.

13:19:46 11 A There were attorneys involved. So I would
13:19:48 12 have to answer, yes, I was.

13:19:50 13 Q And that occurred in 1989?

13:19:52 14 A Yes, sir.

13:19:54 15 Q What I'm most focussing on, and your answer
13:19:58 16 was obviously accurate, given the way I asked the
13:20:02 17 question. Since 1997 and the time you were deposed,
13:20:10 18 have you had discussions with any attorneys about
13:20:14 19 possible testimony in any case against a tobacco
13:20:16 20 company other than the State of Oklahoma which brings
13:20:20 21 you here today?

13:20:22 22 A Yes, sir.

13:20:22 23 Q And what other cases have you had
13:20:24 24 discussions about possible testimony in?

13:20:26 25 A The State of Missouri lawsuit scheduled for

13:20:30 1 trial in 2000, I believe.

13:20:34 2 Q Any others?

13:20:34 3 A No, sir.

13:20:54 4 Q Have you had discussions with any attorneys
13:20:56 5 about testifying in the State of Oklahoma's case?

13:21:02 6 A Yes, I have, sir.

13:21:04 7 Q And with whom have you had discussions about
13:21:06 8 testifying?

13:21:08 9 A Attorney Cherie Durand and her paralegal,
13:21:16 10 Colleen Hemelgarn, I believe.

13:21:16 11 Q And do you know what firm she works with?

13:21:18 12 A Yes, sir.

13:21:18 13 Q And what firm is that?

13:21:20 14 A Ness, Motley and Lawton.

13:21:22 15 MS. FLOWERS: Actually, excuse me. It's

13:21:24 16 Ness, Motley, Loadholt, Richardson & Poole.

13:21:28 17 THE WITNESS: I'm sorry.

13:21:30 18 MR. NIMS: Mr. Motley usually refers to it
13:21:32 19 as the Motley Crew.

13:21:34 20 THE WITNESS: Mr. Motley is probably turning
13:21:36 21 in his grave now. Sorry. No disrespect
13:21:40 22 intended.

23 BY MR. NIMS:

13:21:40 24 Q When did you first have discussions about
13:21:44 25 the possibility of testifying in the Oklahoma case?

13:21:46 1 A It would have to be in August of this year.

13:22:02 2 Q And what was your understanding of the
13:22:06 3 request that you consider testifying, if there was a
13:22:06 4 request that you consider testifying?

13:22:10 5 A I was requested to tell my story, being the
13:22:18 6 former Winston man for R.J. Reynolds from 1981 to
13:22:20 7 1987, and what I saw, what I heard and what I was
13:22:24 8 expected to emulate being a Winston man.

13:22:28 9 Q Is it your understanding that that will be
13:22:36 10 the scope of your testimony that will be solely about
13:22:36 11 your experiences during the period of time that you
13:22:40 12 were involved in Winston advertising?

13:22:44 13 A Are you referring to strictly the Oklahoma
13:22:48 14 case, sir?

13:22:48 15 Q Yes.

13:22:50 16 A Yes, sir.

13:22:58 17 May I say something?

13:22:58 18 Q Yes.

13:23:00 19 A I neglected one other discussion I had with
13:23:02 20 an attorney in Texas in 1985 that I was asked to
13:23:08 21 testify in. And I refused.

13:23:10 22 Q Right. And there was testimony about the
13:23:16 23 possibility of your testifying in that case which I
13:23:20 24 believe was the Allgood case in your prior deposition
13:23:22 25 last year?

13:23:22 1 A As I recall. I just neglected this time.

13:23:26 2 Q That's fine.

13:23:26 3 MS. FLOWERS: Also, to clarify, I am an

13:23:28 4 attorney. And we have had conversations, however

13:23:32 5 recent.

6 BY MR. NIMS:

13:23:36 7 Q Is it your present intention to travel to

13:23:40 8 Oklahoma and testify during the trial of the State of

13:23:44 9 Oklahoma's case?

13:23:46 10 A If asked, yes, sir.

13:23:46 11 Q Is it your understanding that at least as of

13:23:58 12 now you have been asked and they do want you to come

13:24:00 13 to Oklahoma?

13:24:02 14 A No, sir.

13:24:04 15 Q You have no understanding or you have a

13:24:06 16 different understanding than that?

13:24:08 17 A No one has discussed me going to Oklahoma

13:24:12 18 for trial, sir.

13:24:18 19 Q When you were asked to appear for this

13:24:24 20 deposition, what was your understanding of why this

13:24:24 21 deposition was going to occur?

13:24:26 22 A That I was going to be a fact witness and

13:24:30 23 tell the events as I saw them from 1981 to 1987 under

13:24:34 24 the employment of R.J. Reynolds.

13:24:50 25 Q Do you have any understanding of the nature

13:24:54 1 of the lawsuit in Oklahoma, what it's about?

13:25:00 2 A I believe I do, sir, yes.

13:25:00 3 Q And what understanding do you have about the
13:25:02 4 nature of that case?

13:25:04 5 A That they are looking for remuneration to
13:25:10 6 recompense for expenses paid in Medicare, Medicaid.
13:25:14 7 I'm not quite sure which one. Moneys will be made
13:25:20 8 available for prevention and education of children
13:25:26 9 becoming addicted to tobacco; that there will be
13:25:30 10 cessation and motivation programs made available to
13:25:38 11 teenagers who are currently addicted and would like to
13:25:38 12 quit smoking or chewing.

13:25:40 13 My understanding is that there will be funds
13:25:44 14 made available for new ordinances to make sure stores
13:25:54 15 are not breaking the law in selling cigarettes to
13:25:54 16 minors. As far as other specifics, I'd be guessing.
13:26:02 17 That's the basic overall knowledge I have of it.

13:26:06 18 Q Do you expect to receive any compensation
13:26:16 19 for your time for any testimony you give in Oklahoma?

13:26:18 20 A I would hope, so, yes, sir.

13:26:20 21 Q Have you had any discussions about the
13:26:22 22 nature of such compensation?

13:26:24 23 A No, sir.

13:26:32 24 Q What compensation would you hope to receive
13:26:36 25 if you do come to Oklahoma to testify?

13:26:40 1 A I really haven't thought about it, sir.

13:26:42 2 Q Would you expect to be paid for any time on
13:26:58 3 an hourly rate of some kind if you come to Oklahoma?

13:27:00 4 A I would expect so, yes, sir.

13:27:02 5 Q Do you have an hourly rate that you consider
13:27:24 6 kind of your standard hourly rate that you hope to get
13:27:24 7 when you're doing educational activities?

13:27:30 8 MS. FLOWERS: Excuse me. Object to the form
13:27:30 9 just because I was unclear if you're talking
13:27:32 10 about in the context of him testifying or in the
13:27:34 11 context of his educational activities.

13:27:42 12 MR. NIMS: You may answer.

13:27:44 13 THE WITNESS: Could you repeat the question,
13:27:46 14 sir?

15 BY MR. NIMS:

13:27:46 16 Q Sure. Do you have an hourly rate that you
13:27:50 17 regard as kind of your standard hourly rate when
13:27:50 18 you're involved in educational activities respecting
13:27:54 19 tobacco?

13:27:58 20 A Yes, I do, with exceptions.

13:28:02 21 Q And, first, why don't you tell me what you
13:28:06 22 regard your standard rate to be. And then we'll talk
13:28:08 23 about the exceptions.

13:28:08 24 A My standard rate for school programs would
13:28:12 25 be 250 dollars per hour. A full day workshop with

13:28:28 1 motivation programs could be up to 750 a day, morning
13:28:34 2 until evening. Public service announcements are
13:28:38 3 zero. I do an awful lot of pro bono work as well. So
13:28:42 4 it's difficult for me to generalize and capsulize
13:28:46 5 everything, sir.

13:28:50 6 Q And just to make sure that I understand
13:28:56 7 correctly, at least at this point, you've had no
13:29:00 8 discussions with attorneys for the State of Oklahoma
13:29:02 9 about what compensation you might receive if you do
13:29:06 10 come to trial and testify in that case?

13:29:08 11 A That is correct, I have not.

13:29:28 12 THE WITNESS: May I clarify something?

13:29:30 13 MR. NIMS: Any time you feel you ought to
13:29:34 14 say something more to be accurate to something
13:29:36 15 you've already said, feel free to do so.

13:29:38 16 THE WITNESS: I'm a little naive here. But
13:29:40 17 am I expected to go to Oklahoma? Is that what
13:29:42 18 you're telling me, that because I'm here I will
13:29:44 19 be in Oklahoma, as you implied earlier, that I
13:29:48 20 should have known that?

13:29:50 21 MS. FLOWERS: May I answer that?

13:29:50 22 MR. NIMS: You may.

13:29:52 23 THE WITNESS: Please.

13:29:52 24 MS. FLOWERS: I believe it's a judgment call
13:29:54 25 that will probably be made by trial counsel at

13:29:56 1 some point. We certainly would never have listed
13:30:00 2 you as a witness if we didn't hope to bring you
13:30:02 3 to Oklahoma. This deposition will become part of
13:30:08 4 the record of that case. Does that answer your
13:30:10 5 question?

13:30:10 6 THE WITNESS: No.

13:30:12 7 MS. FLOWERS: Perhaps we could discuss it
13:30:16 8 off the record later, if you like.

13:30:16 9 THE WITNESS: I'm just confused because I
13:30:18 10 was listening to you. And you assumed that I was
13:30:22 11 going to Oklahoma as I think I assume, but I
13:30:24 12 wasn't sure how the legalities work. So I was
13:30:28 13 just trying to clarify.

13:30:30 14 MR. NIMS: So it's clear, I represent
15 R.J. Reynolds Tobacco Company. It would not be
13:30:38 16 my intention to try and get you to come to
13:30:46 17 Oklahoma. If somebody wants you to come to
13:30:46 18 Oklahoma, it will be the people who represent the
13:30:50 19 State of Oklahoma with whom you've had
13:30:52 20 discussions.

13:30:54 21 THE WITNESS: I see now.

13:30:54 22 MR. NIMS: And that decision will presumably
13:30:56 23 be made at a later date. But I, representing
13:31:00 24 R.J. Reynolds Tobacco Company, am just trying to
13:31:02 25 find out in this deposition what the expectation

13:31:06 1 presently is about whether you'll come and if you
13:31:08 2 know. I think you've answered the questions.

13:31:12 3 MS. FLOWERS: I can state for the record
13:31:14 4 that my understanding, the intention is to bring
13:31:16 5 David to trial if he's available to come.

13:31:20 6 THE WITNESS: I'm clear now. Thank you.

7 BY MR. NIMS:

13:31:34 8 Q I'm going to go through very briefly, I
13:31:38 9 hope, some of the allegations in the Oklahoma
13:31:44 10 complaint to determine, I hope, that on most of them
13:31:52 11 you don't believe you have knowledge on those aspects,
13:31:54 12 that you would have knowledge only on ones having to
13:31:58 13 do with advertising.

13:32:00 14 MS. FLOWERS: Michael, I have a copy if you
13:32:02 15 want me to have it for the witness for ease of
13:32:06 16 reference.

13:32:06 17 MR. NIMS: Sure. That would be great if you
13:32:08 18 could put it in front of him. I won't mark it
13:32:10 19 unless you want me to.

13:32:12 20 THE WITNESS: Excuse me. May I take off my
13:32:14 21 jacket?

13:32:14 22 MR. NIMS: Absolutely.

13:32:26 23 MS. FLOWERS: Is this what you have?

13:32:28 24 MR. NIMS: Yes.

25 BY MR. NIMS:

13:32:34 1 Q Mr. Goerlitz, counsel has placed in front of
13:32:38 2 you a copy of the complaint in the Oklahoma action.
13:32:42 3 Have you ever had an opportunity to review that entire
13:32:46 4 complaint?

13:32:46 5 A Yes, sir.

13:32:50 6 Q And when was that?

13:32:50 7 A Today.

13:32:56 8 Q If you could look at paragraph 1 of the
13:33:08 9 complaint, that should be after you get past the
13:33:08 10 caption.

13:33:10 11 A Okay.

13:33:12 12 Q If you could just quickly read that
13:33:54 13 paragraph to yourself. During the period of time that
13:33:56 14 you were involved in advertising for Winston, did you
13:34:04 15 have any discussions with anyone you believed to be
13:34:04 16 employed by a tobacco company that you believe are
13:34:10 17 relevant to the allegations in that paragraph?

13:34:10 18 A Yes.

13:34:12 19 MS. FLOWERS: One moment. I just wanted to
13:34:16 20 lodge an objection to the form.

13:34:16 21 THE WITNESS: Yes, sir.

22 BY MR. NIMS:

13:34:18 23 Q And could you tell me what discussions you
13:34:24 24 had that you believe are relevant to the allegations
13:34:24 25 of paragraph 1.

13:34:26 1 A The misconduct of the tobacco industry, as I
13:34:36 2 recall, in confusing not only smokers but new would-be
13:34:40 3 smokers causes me to believe that the tobacco industry
13:34:50 4 was very negligible when it came to telling the truth
13:34:56 5 about their product, causing so much disease in the
13:35:00 6 smokers.

13:35:02 7 Q Did any one who you believed to be employed
13:35:08 8 by a tobacco company ever tell you that they were
13:35:14 9 aware that the company was lying about any aspect of
13:35:18 10 its product?

13:35:18 11 A Yes, sir.

13:35:18 12 Q And who do you believe told you that?

13:35:22 13 A Dale Zane.

13:35:26 14 Q During your deposition in 1997 there was
13:35:34 15 much testimony, and I won't go through it all, about
13:35:42 16 whether it was Dale Zane or Zane Dale (phonetic) or
13:35:46 17 whether that was the real name. Do you have any
13:35:52 18 information today that sheds any additional light on
13:35:54 19 that question beyond what you testified to in your
13:35:56 20 deposition August of 1997?

13:36:00 21 A No, sir.

13:36:00 22 Q What position do you believe that -- strike
13:36:14 23 that.

13:36:16 24 What name did you use a minute ago? Was it
13:36:22 25 Dale Zane?

13:36:24 1 A As I recall, it was Dale Zane, yes, sir.

13:36:28 2 Q What position do you believe that Dale Zane

13:36:30 3 held at a tobacco company?

13:36:32 4 A As I recall, he was introduced as marketing

13:36:36 5 director.

13:36:40 6 Q And this would have been of R.J. Reynolds

13:36:42 7 Tobacco Company as you understood it?

13:36:44 8 A Yes, sir.

13:36:56 9 Q And when were you first, as you recall,

13:36:58 10 introduced to this gentleman?

13:37:04 11 A My memory sixteen years ago is a little off,

13:37:16 12 but I'm sure it was 1981, May or June of 1981, sir.

13:37:22 13 Around that time frame.

13:37:22 14 Q Do you recall who introduced you to this

13:37:26 15 gentleman?

13:37:26 16 A Larry Wassom (phonetic).

13:37:34 17 Q And he was with Esty?

13:37:36 18 A William Esty Advertising, yes, sir.

13:37:40 19 Q Was anyone else present when you were

13:37:50 20 introduced to this gentleman that you can recall?

13:37:54 21 A I believe there were several people present.

13:37:58 22 Q Do you remember who any of them were?

13:37:58 23 A Yes, sir.

13:38:00 24 Q And who were they?

13:38:00 25 A Corbin Bernsen, Billy Kendall, John Neil,

13:38:18 1 Michael Rynhardt, Cortland Litz, Rick Wiltz, and I
13:38:26 2 believe Amele Dospenso (phonetic).

13:38:28 3 Q And where was this group of people assembled
13:38:34 4 when you were introduced to this gentleman?

13:38:38 5 A Mount Evans, Colorado.

13:38:50 6 Q I asked you a few questions back about
13:39:02 7 whether you had ever had a conversation in which you
13:39:08 8 believe somebody employed by a tobacco company
13:39:14 9 indicated that they had knowledge that a tobacco
13:39:16 10 company was lying about its product. And you
13:39:20 11 mentioned yes and Dale Zane.

13:39:22 12 Did the conversation to which you made
13:39:26 13 reference occur at this particular session in
13:39:30 14 Mount Evans, Colorado, or did it occur at some other
13:39:34 15 time?

13:39:34 16 A I'm confused, sir. The meeting?

13:39:38 17 Q Right. Let me see if I can clarify. You've
13:39:42 18 indicated that you believe you first met this
13:39:46 19 gentleman that you believe was named Dale Zane at a
13:39:54 20 time when there was a group of people that you've
13:39:56 21 identified assembled at Mount Evans, Colorado; is that
22 correct?

13:40:00 23 A That is correct.

13:40:00 24 Q Was it on this that occasion that Mr. Zane
13:40:08 25 said something that you believe indicated he believed

13:40:10 1 a tobacco company lied about something about its
13:40:14 2 product?

13:40:14 3 A No, sir.

13:40:14 4 MS. FLOWERS: Object to the form of the
13:40:16 5 question.

6 BY MR. NIMS:

13:40:16 7 Q So the conversation in which that happened
13:40:18 8 was some other time?

13:40:20 9 A Yes, sir.

13:40:28 10 Q Okay. This first time that you met the
13:40:30 11 gentleman you believed was Mr. Zane, what do you
13:40:36 12 recall his saying, if anything?

13:40:38 13 A Brief, very congratulatory, grateful that
13:40:52 14 they had a new campaign that was going to sell more
13:40:54 15 product, very cordial.

13:41:10 16 Q The session in Mount Evans, Colorado, were
13:41:14 17 you out there to do some shooting of an ad?

13:41:18 18 A Yes, sir.

13:41:20 19 Q Would this have been the first ad that you
13:41:22 20 had ever done for Winston?

13:41:24 21 A Yes, sir.

13:41:24 22 Q The other people that you've identified in
13:41:38 23 the group, did some of them appear to already know
13:41:42 24 this gentleman, Mr. Zane, other than Larry Wassom who
13:41:46 25 introduced him to you?

13:41:48 1 A Yes, sir.

13:41:50 2 Q Which ones do you believe already knew him?

13:41:50 3 A To the best of my recollection, John Neil,

13:41:58 4 Amele Dospenso, and Michael Rynhardt.

13:42:06 5 Q And who was John Neil?

13:42:08 6 A Our director -- I beg your pardon. Ad

13:42:12 7 executive with Larry Wassom.

13:42:16 8 Q So you understood him to be an employee of

13:42:18 9 the advertising agency?

13:42:20 10 A Yes, sir.

13:42:20 11 Q And who was -- I may get this wrong because

13:42:26 12 I wrote it down fast -- Dospenso?

13:42:34 13 A Amele Dospenso.

13:42:34 14 Q And who he was he?

13:42:36 15 A Art director for William Esty.

13:42:38 16 Q And who was Michael Rynhardt?

13:42:40 17 A Photographer.

13:42:54 18 Q Were some of the people that were in this

13:42:58 19 group that you have identified models for ads,

13:43:02 20 basically people who had the same role you did?

13:43:04 21 A Yes, sir.

13:43:06 22 Q Did you have any impression of whether any

13:43:08 23 of them had ever met this gentleman, Dale Zane,

13:43:14 24 before?

13:43:14 25 A I don't recall.

13:43:22 1 Q Have you told me all you can recall of this
13:43:26 2 first time you met Mr. Zane of anything you recall his
13:43:28 3 saying?

13:43:30 4 MS. FLOWERS: Object to the form. I think
13:43:34 5 it's overly broad. But I may misunderstand the
13:43:40 6 number of meetings that they had.

13:43:44 7 THE WITNESS: Lots was said. Could you
13:43:46 8 repeat the question, sir?

9 BY MR. NIMS:

13:43:50 10 Q Yes. You can appreciate -- you've been
13:43:52 11 through a deposition before. You can appreciate that
13:43:54 12 the purpose for why I am here is to make sure I
13:44:04 13 understand the facts that you might testify to. And I
13:44:06 14 just want to be sure as best you can tell me
13:44:10 15 everything you recall this gentleman, Dale Zane,
13:44:14 16 having said on this occasion when you first met him in
13:44:18 17 Mount Evans, Colorado.

13:44:20 18 A There was other things that were said, yes,
19 sir.

13:44:26 20 Q Okay. Can you recall any of them?

13:44:28 21 A He did not like the helicopter. He
13:44:34 22 expressed dissatisfaction with the color of the
13:44:42 23 helicopter. I recall him saying that the lighting was
13:44:48 24 too bright at that particular time of day. I recall
13:44:54 25 this person wishing the camera faced another angle to

13:45:00 1 the canyon. Other than that, it's very general
13:45:04 2 conversation from what I believe to have been his
13:45:12 3 dictating to the ad executives what he was looking for
13:45:12 4 on behalf of R.J. Reynolds of which we complied and
13:45:16 5 did the changes.

13:45:20 6 So to answer your question, there was a lot
13:45:22 7 said while we were in that midst of the grouping. So
13:45:26 8 I don't want you to believe that he only said hello,
13:45:28 9 cordials, and congratulations to the new Winston team.

13:45:40 10 Q Was there anybody else there, besides him,
13:45:44 11 who you believed to be an employee of R.J. Reynolds
13:45:46 12 Tobacco Company?

13:45:48 13 A Not that I'm aware of, sir, no.

13:46:00 14 Q You indicated a while back, a few questions
13:46:06 15 back, that at some point you had a conversation with
13:46:06 16 Mr. Zane in which you believe he said something that
13:46:16 17 indicated he believed the company lied in some fashion
13:46:20 18 about its product. When did the conversation that you
13:46:24 19 have in mind occur?

13:46:26 20 A Later that afternoon on the same day that I
13:46:30 21 met him but much later that day.

13:46:36 22 Q Would you tell me as best you can everything
13:46:38 23 you recall his having said later that day.

13:46:46 24 A I had to be on oxygen for a good part of the
13:46:52 25 day because of the altitude of Mount Evans. They were

13:46:56 1 laughing at the fact that I was walking around
13:47:02 2 disconnecting my oxygen mask so I could smoke. I
13:47:08 3 commented to him that I see none of you from the ad
13:47:12 4 agency or R.J. Reynolds smoking. I said, Why?

13:47:22 5 Dale Zane looked at me and said, We don't
13:47:24 6 smoke the shit. We just sell it. We reserve the
13:47:30 7 right to smoke for the young, the poor, the black and
13:47:32 8 the stupid.

13:47:44 9 Q Do you recall his saying anything else at
13:47:46 10 that time?

13:47:54 11 A Something to the nature that nobody should
13:47:54 12 be smoking, but it was not directed to me because of
13:48:02 13 the oxygen. Something -- and I could be wrong in my
13:48:08 14 recollection, if it came from him or Amele Dospenso
13:48:16 15 because at that point we were no longer allowed to
13:48:22 16 smoke while hooked up to oxygen.

13:48:22 17 Q And I take it the reason you were taking
13:48:28 18 oxygen was it must have been because of the altitude
13:48:34 19 of Mount Evans Colorado?

13:48:36 20 A As I believe it to be, yes.

13:48:38 21 Q You were up in the mountains, I take it?

13:48:40 22 A Plus being a heavy smoker and being at the
13:48:44 23 altitude that I was.

13:48:44 24 Q I mean, somebody had brought oxygen along.
13:48:48 25 I assume that you hadn't requested that they bring

13:48:50 1 oxygen?

13:48:52 2 A I did not request it, no.

13:48:52 3 Q Can you recall anything else that you
13:49:06 4 believe Mr. Zane said on that day?

13:49:12 5 A He also said that it was our job to find new
13:49:14 6 smokers.

13:49:24 7 Q Anything else?

13:49:24 8 A This campaign looked as if it was going to
13:49:28 9 do the job. Other things were said. But I'm not sure
13:49:42 10 if they came --

13:49:42 11 They came from someone who had hired me.

13:49:44 12 But I'm not sure if they were directives of his or the
13:49:48 13 art director or the executive. So at this point,
13:49:52 14 that's pretty much all that I believe he had said to
13:49:54 15 me directly, as far as I recall.

13:50:02 16 Q Regardless of to whom he may have been
13:50:02 17 directing the comment, do you remember anything else
13:50:06 18 that you believe he said which you heard on that day?

13:50:14 19 A I believe that's all he said, to the best of
13:50:16 20 my ability.

13:50:36 21 Q Did anybody say anything in response to the
13:50:38 22 comment he made about smoking being for the young, the
13:50:42 23 poor, the black and the stupid?

13:50:44 24 A They all laughed.

13:50:46 25 Q Did Mr. Zane say anything else that you

13:51:54 1 believe indicated in some way that he believed that
13:51:54 2 R.J. Reynolds lied about its product?

13:52:02 3 A Other than referring to his product as shit,
13:52:04 4 no.

13:52:08 5 Pardon me.

13:52:08 6 Q Did you ever meet anyone you understood to
13:52:20 7 be employed by R.J. Reynolds who smoked R.J. Reynolds
13:52:26 8 products?

13:52:26 9 A I believe I met a gentleman in Utah who was
13:52:40 10 identified to me as an R.J. Reynolds employee who
13:52:40 11 smoked, yes, sir.

13:52:40 12 Q Do you know how many of the top executives
13:52:42 13 of R.J. Reynolds Tobacco Company in 1981 were smokers?

13:52:50 14 A No, sir.

13:53:00 15 Q Were any of the models who were involved in
13:53:08 16 Winston campaigns during the time period that you were
13:53:10 17 involved in Winston campaigns smokers other than
13:53:14 18 yourself?

13:53:14 19 A I believe there was two others over the
13:53:16 20 six-and-a-half, seven-year period.

13:53:18 21 Q And do you recall who they were?

13:53:24 22 A Cortland Litz, and I believe Corbin Bernson
13:53:28 23 smoked somewhat during the shoots but was not a
13:53:32 24 regular smoker.

13:53:32 25 Q Were they people that you regarded as among

13:53:38 1 the young?

13:53:40 2 A Yes, sir.

13:53:42 3 Q What would you say their ages were?

13:53:50 4 A I believe they were -- Corbin was 28 at the
13:54:00 5 time. And I'm not sure how old Cortland was.

13:54:02 6 Q Would you estimate that he was older than
13:54:02 7 21?

13:54:02 8 A Yes, sir.

13:54:04 9 Q Do you know whether smoking rates in the
13:54:40 10 United States are higher among whites or among blacks?

13:54:46 11 MS. FLOWERS: Object to the extent that it
13:54:46 12 calls for expertise.

13:54:52 13 MR. NIMS: I'm well aware that he's not
13:54:52 14 being offered as an expert. I'm only asking if
13:54:56 15 he knows the answer to that fact question.

13:55:00 16 THE WITNESS: No, I don't.

17 BY MR. NIMS:

13:55:22 18 Q If I could redirect your attention back to
13:55:26 19 paragraph 1 of the complaint where we started half an
13:55:30 20 hour ago, have you had any other conversation other
13:55:38 21 than the ones you've now testified to that you had
13:55:44 22 with Mr. Zane that you believe are relevant to the
13:55:48 23 allegations in paragraph 1?

13:55:52 24 MS. FLOWERS: I just want to object to the
13:55:52 25 form of the question again. And simply because

13:55:54 1 there is so much in paragraph 1 I believe it's
13:55:58 2 compound.

13:56:04 3 THE WITNESS: Yes.

4 BY MR. NIMS:

13:56:04 5 Q Okay. Well, first, let's see if we can
13:56:10 6 define the universe. As you read paragraph 1, how
13:56:20 7 many other conversations come to mind that you believe
13:56:22 8 are relevant to the allegations in that paragraph?

13:56:30 9 A I don't have any idea how many
13:56:30 10 conversations. I would have to take a break and think
13:56:34 11 of them in my head. I know there were more than five,
13:56:42 12 but I would be mistaken if I said I know the total
13:56:44 13 number as it applies directly to this paragraph
13:56:50 14 without studying the paragraph.

13:56:50 15 Q Well, let's at least start with those that
13:56:54 16 you presently can recall and that you believe are
13:56:56 17 relevant to the allegations in that paragraph.

13:57:00 18 What's the first conversation other than
13:57:04 19 those we've already talked about that you can recall
13:57:08 20 that you believe is relevant to the allegations in
13:57:10 21 that paragraph.

13:57:12 22 MS. FLOWERS: Let me just lodge a continuing
13:57:14 23 objection so I don't have to continue
13:57:16 24 interrupting you to the compound nature of
13:57:18 25 paragraph 1.

13:57:20 1 MR. NIMS: Sure.

13:57:22 2 MS. FLOWERS: Go ahead.

13:57:22 3 THE WITNESS: It is my belief when I was
13:57:26 4 told that my job was to be a live version of a
13:57:30 5 GI Joe action figure to emulate ruggedness,
13:57:44 6 machismo, that it was directly related to getting
13:57:48 7 teenage boys smoking.

13:57:58 8 While being directed in the shoots, loud
13:58:04 9 music would be played, Apocalypse Now, helicopter
13:58:08 10 sound effects. I would be directed to recall
13:58:12 11 what it's like being a 12-, 13- or 14-year-old
13:58:14 12 boy playing GI Joe.

13:58:22 13 Another conversation was --

13:58:24 14 MR. NIMS: Before we go to another one,
13:58:28 15 let's stick with this one, then.

13:58:32 16 THE WITNESS: Excuse me. I need to use the
13:58:32 17 restroom.

13:58:34 18 MR. NIMS: Sure.

13:58:34 19 (A brief recess was taken.)

20 BY MR. NIMS:

14:05:12 21 Q All right. Mr. Goerlitz, before we took the
14:05:14 22 brief break, you had indicated that you recalled a
14:05:22 23 conversation or conversations -- I wasn't sure
14:05:24 24 which -- in which you were instructed to be a GI Joe
14:05:30 25 action figure to emulate ruggedness, to think like a

14:05:34 1 12- or 13-year-old boy. Was this a particular
14:05:40 2 conversation that you're recalling?
14:05:44 3 A It was several conversations.
14:05:46 4 Q And were all of the conversations with a
14:05:50 5 particular person or were they with different people?
14:05:52 6 A Different people.
14:05:54 7 Q Okay. Could you tell me the first person
14:05:58 8 you believe you had a conversation with involving any
14:06:02 9 of these general themes that you just mentioned?
14:06:08 10 A I cannot recall who said what, when.
14:06:12 11 Q Do you recall the names of any of the people
14:06:16 12 who you believe were communicating these concepts to
13 you?
14:06:18 14 A Yes, sir.
14:06:20 15 Q And who were they?
14:06:20 16 A Amele Dospenso, your favorite. Michael
14:06:32 17 Rynhardt. On another occasion, a different
14:06:36 18 photographer Dick Duranz (phonetic), John Neil. I
14:06:52 19 don't recall if it was the gentleman in Utah or not.
14:06:54 20 I don't know his name, a different employee on a
14:06:58 21 different shoot, so I'm not quite sure. But I recall
14:07:04 22 him being there. And who said what, my memory is not
14:07:08 23 that good.
14:07:08 24 Q Let me cover him for just a minute. Did you
14:07:12 25 have any understanding when you first met this

14:07:16 1 gentleman in Utah as to what his employment was at
14:07:22 2 R.J.R.?

14:07:26 3 A He was introduced to me as a bigwig from
14:07:30 4 R.J. Reynolds. That's all I remember.

14:07:34 5 Q Was this occasion in Utah the only time you
14:07:40 6 met him?

14:07:40 7 A Yes, sir.

14:07:48 8 Q And do you recall anything that you
14:07:48 9 specifically believe he said on this occasion when you
14:07:52 10 met him?

14:07:54 11 A No, other than the conversation in general I
14:08:08 12 recall, but not specifically. Maybe I don't
14:08:10 13 understand the question, if it's relating to this or
14:08:14 14 just any general conversation.

14:08:16 15 Q Well, really both. If I've understood what
14:08:18 16 you've told me so far, there are kind of a series of
14:08:26 17 events that run together in your mind in which you
14:08:30 18 were told to be this GI Joe action figure and the
14:08:38 19 other things that you testified to. And correct me if
14:08:40 20 I'm wrong, but my understanding of what you've said is
14:08:48 21 that you don't specifically recall who said these
14:08:48 22 things.

14:08:50 23 But you remember in general their coming
14:08:54 24 from Rynhardt, Dospenso, another photographer Duranz,
14:09:02 25 and Neil. And then you said you didn't recall whether

14:09:04 1 the gentleman in Utah had said any of these things or
14:09:08 2 not; is that correct?
14:09:08 3 A That is correct.
14:09:10 4 Q And so, then my question was, Do you have
14:09:16 5 any specific recollection of anything that the
14:09:20 6 gentleman in Utah did say when you met him? And I
14:09:26 7 take it you only met him on one occasion.
14:09:26 8 A Yes, sir. He said he wanted my coat, my
14:09:32 9 leather jacket.
14:09:36 10 Q Anything else you recall his saying?
14:09:38 11 A More cordial, congratulations, market shares
14:09:48 12 were going up, way to go Golden Boy, things of that
14:10:00 13 nature, just friendly, supportive, rah-rah kind of
14:10:02 14 cheerleading I would describe it, sir.
14:10:04 15 Q I believe you indicated in your deposition a
14:10:12 16 year ago that you believe the time period in which you
14:10:14 17 were making Winston ads was roughly 1981 to 1987; is
18 that correct?
14:10:22 19 A Roughly 1981 to 1987, that is correct.
14:10:26 20 Q During that period of time did anybody tell
14:10:32 21 you whether Winston's market share was going up or
14:10:36 22 going down?
14:10:40 23 A I was told it was going up.
14:10:44 24 Q And do you recall who told you it was going
14:10:46 25 up during 19 -- strike that.

14:10:48 1 Do you recall who told you it was going up?
14:10:52 2 A Yes, sir, I do.
14:10:56 3 Q And who told you it was going up?
14:10:56 4 A There were several people.
14:11:00 5 Q Do you recall any of who they were?
14:11:00 6 A Amele Dospenso, Larry Wassom. Joseph, I
14:11:08 7 believe his name to be the employee who was on the
14:11:18 8 Utah shoot. Several secretaries from the William Esty
14:11:20 9 office. That's about all I can recall, sir.
14:11:30 10 Q Did you ever look at any actual market sales
14:11:42 11 figures to determine whether or not Winston's share of
14:11:48 12 the cigarette market was going up or going down during
14:11:50 13 the period of time when you were involved with Winston
14:11:54 14 ads?
14:11:58 15 A No, sir.
14:11:58 16 Q I take it it would be a surprise to you if,
14:12:10 17 in fact, Winston's share of the cigarette market was
14:12:14 18 declining during that six-year period?
14:12:18 19 A Yes, it would surprise me.
14:12:20 20 Q A few minutes ago you indicated that you
14:12:46 21 could quickly call to mind maybe as many as five
14:12:52 22 conversations that you believe were relevant to the
14:12:56 23 allegations of paragraph 1. And then you told me
14:13:04 24 about the series of conversations that you described
14:13:06 25 having to do with the GI action figure. Were all five

14:13:14 1 of them of those same kind, or were there other
14:13:16 2 conversations that you believe were relevant to the
14:13:18 3 allegations of paragraph 1?

14:13:20 4 A There were other comments and discussions.

14:13:24 5 Q Okay. Would you tell me about the next
14:13:28 6 conversation you recall that you believe is relevant
14:13:30 7 to paragraph 1 of the complaint.

14:13:34 8 MS. FLOWERS: Can we please be specific
14:13:36 9 about which part of paragraph 1 we're talking
14:13:38 10 about?

14:13:40 11 MR. NIMS: Well, the person who can probably
14:13:42 12 provide the most specificity is the witness.

13 BY MR. NIMS:

14:13:46 14 Q Is there some part of paragraph 1 that you
14:13:52 15 specifically have in mind that you believe there were
14:13:54 16 conversations relevant to?

14:13:56 17 A Yes, sir.

14:13:56 18 Q And what part of paragraph 1 is that?

14:13:58 19 A Ignoring and suppressing the truth.

14:14:00 20 Q Okay. Is that the only part of paragraph 1
14:14:06 21 that you believe you were a part of conversations that
14:14:08 22 were relevant?

14:14:10 23 A No, sir.

14:14:10 24 Q What other --

14:14:10 25 A This is what I recall, as you asked.

14:14:14 1 Q Right. I understand. What other parts of
14:14:16 2 paragraph 1 do you believe you were involved in
14:14:20 3 conversations that are relevant?
14:14:28 4 A The mention of diseases, cancer, emphysema,
14:14:30 5 heart disease.
14:14:32 6 Q Any others?
14:14:32 7 A That would be all that I recall.
14:14:48 8 Q Well, let's talk first, then, about
14:14:52 9 conversations that you believe are relevant to the
14:14:58 10 allegations concerning suppressing the truth. Are
14:14:58 11 there other conversations that you can recall that you
14:15:06 12 believe are relevant to those particular allegations?
14:15:06 13 A Yes, sir.
14:15:06 14 Q Okay. Would you tell me the other
14:15:08 15 conversations that you can recall that you believe
14:15:12 16 have such relevance.
14:15:14 17 A As I recall, in Sedona, Arizona, we were
14:15:20 18 told that lots of money was going to go into a new or
14:15:24 19 a different brand account called Camel. They told me
14:15:36 20 that the shoots for Winston would be less frequent
14:15:44 21 because Smoking Joe, the new Camel character, was
14:15:52 22 being introduced, since Winston had gone from number 4
14:16:00 23 to number 2 in sales. Conversation went on to
14:16:08 24 describe what the new account would be for Camel and
14:16:14 25 how it would appear.

14:16:18 1 The conversation went on to describe the
14:16:22 2 form of a cartoon character called Smoking Joe. I was
14:16:30 3 led to believe that that account had already been
14:16:36 4 story-boarded and approved by R.J. Reynolds to
14:16:42 5 reintroduce Camel brand in the form of a cartoon
14:16:44 6 character.

14:16:52 7 We discussed the fact that 4 to 5,000 kids
14:16:58 8 need to become smokers every day to replace those who
14:17:06 9 quit or die every day, which leads me now to believe
14:17:12 10 that they know that their product kills people.

14:17:24 11 Based on the conversation that I recall,
14:17:24 12 Smoking Joe, within two to three years, they hoped,
14:17:28 13 would be right behind Winston as the number 3 selling
14:17:34 14 cigarette, knowing that they would never surpass the
14:17:38 15 number 1 brand, Marlboro. And as I stated, I believe
14:17:52 16 this was in Sedona, Arizona, which was somewhere
14:17:54 17 around 1986.

14:17:56 18 Q All of what you've just told me about,
14:18:00 19 Sedona, Arizona, you recall as occurring in one
14:18:08 20 setting and what we'll call one conversation?

14:18:10 21 A That was one conversation, yes, sir.

14:18:12 22 Q Who was present at this conversation in
14:18:18 23 Sedona, Arizona?

14:18:24 24 A I believe there was five or six people, Dave
14:18:26 25 Stevens or John Martin. And I qualify that because we

14:18:38 1 worked in teams. And I'm not sure who my team member
14:18:42 2 was at that time. I do know Cortland Litz was there.
14:18:50 3 Again, my memory may be a little off. Michael
14:19:04 4 Rynhardt. And Doc, he replaced Amele Dospenso.
14:19:10 5 Aren't you pleased?

14:19:12 6 Q I like Doc.

14:19:14 7 A And I did make a mistake in my earlier
14:19:18 8 testimony, as I recall.

14:19:20 9 Q And what was that?

14:19:24 10 A When I said Michael Rynhardt was on the
14:19:28 11 first shoot with Dale Zane, it was not Michael
14:19:30 12 Rynhardt; it was Dick Duranz. Dick Duranz was the
14:19:36 13 photographer on the first three shoots. Michael
14:19:42 14 Rynhardt came in on the fourth shoot, I believe. I
14:19:42 15 apologize.

14:19:54 16 Q Okay. Now, you indicate that in this
14:19:56 17 Sedona-Arizona conversation you believe either Dave
14:20:02 18 Stevens or John Martin were there. Were they other
14:20:06 19 models?

14:20:06 20 A They were other models, yes, sir.

14:20:08 21 Q And who was Mr. Litz?

14:20:12 22 A Cortland Litz was another model who I
14:20:12 23 believe was there. I cannot recall from 16 years ago,
14:20:18 24 because there were several people who came and went
14:20:20 25 after I started. It was not the same team for the

14:20:24 1 entire six-year period.

14:20:26 2 Q And Mr. Rynhardt, you've indicated, was a
14:20:30 3 photographer?

14:20:30 4 A He was the photographer on that
5 Sedona-Arizona shoot, yes, sir.

14:20:34 6 Q Was the photographer an independent
14:20:38 7 contractor, or did you understand that he was an
14:20:38 8 employee of the advertising agency?

14:20:40 9 A I don't have any idea.

14:20:42 10 Q You have no idea who employed him?

14:20:42 11 A No, sir.

14:20:44 12 Q And then Doc, I take it, had become -- since
14:20:52 13 he replaced Mr. Dospenso, he was an advertising agency
14:20:54 14 employee?

14:20:54 15 A Yes, he was.

14:20:56 16 Q Was there anybody in Sedona, Arizona, in
14:20:58 17 this conversation that you believed to be employed by
14:21:02 18 R.J. Reynolds?

14:21:04 19 A I don't recall.

14:21:06 20 Q Who was the person in Sedona, Arizona, that
14:21:16 21 you believe apparently thought they knew something
14:21:18 22 about the Camel campaign?

14:21:20 23 A John Neil and Doc.

14:21:32 24 Q And Neil was also an employee of the
14:21:34 25 advertising agency?

14:21:36 1 A Yes, sir.

14:21:36 2 Q Did you ever discuss any aspect of Camel

14:22:04 3 advertising with anyone that you believed to be

14:22:06 4 employed by R.J. Reynolds?

14:22:10 5 A Not that I recall, other than my impression

14:22:14 6 was the ad agency was R.J. Reynolds in as much as

14:22:20 7 being told what to do and how to do it, in my

14:22:24 8 definition of employment.

14:22:36 9 Q But that was your assumption, I take it?

14:22:36 10 A Yes, sir.

14:22:36 11 MS. FLOWERS: Object to the form.

12 BY MR. NIMS:

14:22:42 13 Q You were never involved yourself in the

14:22:48 14 Camel advertising campaign, were you?

14:22:48 15 A No, sir.

14:23:08 16 Q Have you told me everything you can recall

14:23:10 17 being said by anyone who was a participant in the

14:23:16 18 conversation in Sedona, Arizona, which you believe is

14:23:20 19 relevant to the suppress-the-truth allegations of

14:23:26 20 paragraph 1 of the complaint?

14:23:30 21 A That's all I recall of that particular

14:23:30 22 instance, sir.

14:23:36 23 Q Who said that R.J. Reynolds would never

14:23:48 24 surpass Marlboro as the number 1 selling cigarette?

14:23:58 25 MS. FLOWERS: Object to the form. I mean,

14:23:58 1 ever, or at the Sedona meeting?

14:24:02 2 MR. NIMS: At the Sedona meeting.

14:24:04 3 MS. FLOWERS: Thank you.

14:24:04 4 THE WITNESS: I believe it was John Neil.

5 BY MR. NIMS:

14:24:08 6 Q Did Mr. Neil say why he believed that would

14:24:10 7 be the case?

14:24:12 8 A There was a conversation because someone

14:24:16 9 asked why that would be the case, yes, sir.

14:24:20 10 Q And what, if anything, do you recall

14:24:20 11 Mr. Neil saying about why R.J. Reynolds would never be

14:24:26 12 able to surpass Marlboro?

14:24:28 13 A Because I believe -- I was told in a group,

14:24:36 14 not me specifically, that Phillip Morris had more

14:24:40 15 money for that one particular brand than R.J. Reynolds

14:24:44 16 had for Winston because they were more broadened.

14:24:48 17 They had Winston, Salem, Camel and other

18 R.J. Reynolds' brands, that they were not going to put

14:24:58 19 all of their eggs in one basket or something along

14:25:02 20 those lines which is why the Winston funds would be

14:25:04 21 less in advertising in their budget, moving to Camel.

14:25:12 22 And it was a general conversation like that, sir.

14:25:14 23 And he said, Well, we don't have the money

14:25:22 24 that Phillip Morris has to put into their product, as

14:25:22 25 I recall. Something like that.

14:25:24 1 Q I believe in your earlier deposition you
14:25:28 2 indicated that during the years that you were a smoker
14:25:30 3 you were a Marlboro smoker?

14:25:34 4 A I would say that the majority of the
14:25:40 5 cigarettes I smoked were Marlboro, yes, sir. I did
14:25:42 6 smoke other brands, but my brand loyalty for many
14:25:46 7 years was Marlboro, yes, sir.

14:25:50 8 Q Why did you prefer Marlboro to other brands?

14:25:56 9 A Because it made me feel macho and
14:25:58 10 independent and tough and rugged as the advertisements
14:26:00 11 portrayed.

14:26:00 12 Q So while you're flying around in a
14:26:02 13 helicopter for a Winston ad, you're smoking a Marlboro
14:26:08 14 to feel rugged?

14:26:08 15 A That's false, sir. While I was flying
14:26:12 16 around I was smoking Winstons.

14:26:16 17 Q Did you prefer the flavor of Marlboro to the
14:26:18 18 flavor of Winston?

14:26:24 19 MS. FLOWERS: Objection. Relevance. Go
14:26:26 20 ahead and answer.

14:26:30 21 THE WITNESS: I had no pleasure out of
14:26:34 22 either. I have no taste of food, so I got no
14:26:38 23 flavor from Winstons or Marlboros.

24 BY MR. NIMS:

14:26:52 25 Q Why is it that you have no sense of taste?

14:26:56 1 Is that a medical problem of some sort?

14:26:58 2 A I had a stroke in 1984, sir.

14:27:02 3 Q Prior to 1984 did you have what you assumed
14:27:04 4 to be a normal sense of taste?

14:27:06 5 A Yes, sir.

14:27:06 6 Q And you had been smoking Marlboro for some
14:27:10 7 period of time prior to 1984?

14:27:12 8 A Yes, sir.

14:27:16 9 Q In fact, for many years prior to 1984?

14:27:16 10 A Yes, sir.

14:27:18 11 Q During those years did you prefer the flavor
14:27:22 12 of Marlboro to the flavor of other cigarettes you
14:27:24 13 tried?

14:27:24 14 MS. FLOWERS: Objection. Relevance.

14:27:26 15 THE WITNESS: I was smoking the image, not
14:27:30 16 the product, sir.

17 BY MR. NIMS:

14:27:32 18 Q So you would have smoked Marlboro regardless
14:27:34 19 of how any other cigarette tasted?

14:27:36 20 A Personally?

14:27:38 21 MS. FLOWERS: Object to form.

22 BY MR. NIMS:

14:27:40 23 Q Yes, personally, you.

14:27:44 24 A I would have smoked Marlboro, yes, sir.

14:27:48 25 Q Did you believe they were doing a better job

14:27:52 1 of creating a rugged, macho image than Winston was?

14:27:58 2 A When I was smoking Marlboro they did not
14:28:06 3 have my campaign prior to my becoming a Winston model.

14:28:08 4 Q Which happened in 1981?

14:28:10 5 A 1981, yes, sir. Prior to that it was a
14:28:14 6 different campaign.

14:28:14 7 Q And you continued to smoke Marlboro through
14:28:18 8 1981 through 1982 through 1983, correct?

14:28:20 9 MS. FLOWERS: Object to the form.

14:28:24 10 THE WITNESS: I would smoke whatever was
14:28:26 11 available. I would take cigarettes home from my
14:28:28 12 shoots. So that's not true.

13 BY MR. NIMS:

14:28:30 14 Q But your preferred cigarette, you've told
14:28:34 15 me, was Marlboro?

14:28:34 16 A That is correct.

14:28:36 17 Q And you've told me you preferred it because
14:28:38 18 of the image.

14:28:38 19 A Plus I was a creature of habit. It's easier
14:28:44 20 when you're asking for three packs of cigarettes
14:28:46 21 daily, it's easier to say "Marlboro" because that's
14:28:50 22 what I smoked.

14:28:52 23 Q How old were you in 1983? 33?

14:28:58 24 A Yes, sir.

14:29:08 25 Q And at the age of 33 you're telling me that

14:29:14 1 you were still a real fan of the rugged image that
14:29:16 2 Marlboro had created?

14:29:16 3 MS. FLOWERS: Object to the form of the
14:29:20 4 question and the characterization of the witness'
14:29:20 5 testimony.

14:29:24 6 THE WITNESS: May I answer it?

14:29:26 7 MS. FLOWERS: Yes.

14:29:28 8 THE WITNESS: I don't -- would you repeat
14:29:30 9 the question, sir?

14:29:40 10 MR. NIMS: Sure. Would you read it back.

11 (A portion of the record was read by the
12 reporter.)

14:29:42 13 THE WITNESS: Yes, sir.

14 BY MR. NIMS:

14:29:58 15 Q Okay. Were there any other conversations
14:30:00 16 that you can recall that you believe are relevant to
14:30:04 17 the allegations in paragraph 1 respecting suppressing
14:30:10 18 the truth other than those that you've now told me
14:30:14 19 about today?

14:30:18 20 A I cannot recall any others.

14:30:22 21 Q Now, you also indicated that you had some
14:30:28 22 belief that you had had conversations that were
14:30:32 23 relevant to the allegations of paragraph 1 as they
14:30:36 24 related to some of the diseases; is that correct?

14:30:40 25 A Yes, sir.

14:30:42 1 Q Would you tell me what conversations you
14:30:44 2 were part of that you believe are relevant to those
14:30:46 3 allegations in paragraph 1 of the complaint?

14:30:52 4 A Conversations that I had with other models
14:30:58 5 with regard to why they didn't smoke and I did, why I
14:31:12 6 was a better smoker in print than they were. And they
14:31:16 7 did not smoke themselves because of the cancer and the
14:31:16 8 emphysema scare. Conversations that I recall with
14:31:24 9 Billy Kendall who did not know how to hold a cigarette
14:31:30 10 but had the image and the visual facial image that
14:31:36 11 would entice boys to smoke or young would-be macho
14:31:44 12 children. He said he would never smoke -- ever smoke,
14:31:46 13 but for money, it's amazing what you do regardless of
14:31:54 14 what tobacco is alleged -- has alleged caused in
14:32:00 15 people's lives. Something along that line.

14:32:04 16 Q And just before we move past him, he was
14:32:06 17 another model?

14:32:08 18 A He was another model, yes. And this was
14:32:10 19 said in front of the art director, Amele Dospenso.

14:32:18 20 Q And were there any other conversations that
14:32:22 21 you were a part of that you believe are relevant to
14:32:26 22 the allegations in paragraph 1 respecting diseases?

14:32:36 23 A On one occasion I believe they were talking
14:32:40 24 about what was better for you, tobacco or marijuana.
14:32:50 25 And it was agreed upon that marijuana was safer

14:32:52 1 because it didn't cause horrible cancers, something
14:32:58 2 like that, yes, sir.

14:33:04 3 Q This conversation that compared tobacco to
14:33:06 4 marijuana, where did that take place?

14:33:14 5 A It was on the way back from a shoot, I
14:33:14 6 believe, in the van or the bus, RV, whatever it was we
14:33:20 7 were in. I don't remember. Relaxed.

14:33:26 8 Q Was there anyone in the van, if that's where
14:33:28 9 it in fact took place, that you believed to be an
14:33:32 10 employee of R.J. Reynolds?

14:33:34 11 MS. FLOWERS: Object to the form of the
14:33:34 12 question.

14:33:36 13 THE WITNESS: I don't recall who was there.

14 BY MR. NIMS:

14:33:36 15 Q Who do you specifically recall expressing
14:33:44 16 the opinion that marijuana was safer?

14:33:44 17 A Corbin Bernson or Cortland Litz. It's a
14:33:58 18 toss-up between those two. I'm not sure.

14:34:00 19 Q And they were both, I believe you've already
14:34:06 20 identified, models?

14:34:06 21 A Yes, sir.

14:34:06 22 Q Did you express any opinion on the relative
14:34:26 23 safety of tobacco versus marijuana?

14:34:28 24 A No, sir, I didn't.

14:34:30 25 Q Are there any other conversations that you

14:34:42 1 were part of that you believe are relevant to the
14:34:44 2 allegations of paragraph 1 respecting diseases?

14:34:48 3 A I cannot recall at this point how it would
14:34:58 4 tie in with this first paragraph. So the answer is
14:35:00 5 no, sir.

14:35:06 6 Q So just to hopefully close out paragraph 1,
14:35:06 7 have you told me today all of the conversations that
14:35:12 8 you were part of that you believe are relevant to any
14:35:14 9 aspect of the allegations of paragraph 1 of the
14:35:18 10 complaint?

14:35:20 11 MS. FLOWERS: Object to the form.

14:35:20 12 THE WITNESS: I believe I've told you as
14:35:22 13 much as I can recall at this point, yes, sir.

14 BY MR. NIMS:

14:35:26 15 Q Let me just try and put in one place some
14:35:44 16 things to make sure that I have them clearly. You've
14:35:50 17 indicated that at one point in time in Colorado you
14:35:58 18 had conversations with a gentleman you believe to be
14:36:08 19 named Dale Zane who was identified to you as a
14:36:08 20 marketing director of R.J.R. Tobacco, correct?

14:36:16 21 A Yes, marketing director or marketing
14:36:18 22 executive. I could be wrong in my verbiage there.
14:36:22 23 But yes, one of those. I would say close.

14:36:26 24 Q And you've also told me about somebody that
14:36:28 25 you met one time in Utah that you understood only that

14:36:36 1 he was a bigwig, but you believed that he was employed
14:36:38 2 by R.J. Reynolds; is that correct?

14:36:40 3 A That is correct.

14:36:42 4 Q At any time during the six years that you
14:36:50 5 were working on Winston ad campaigns, did you meet
14:36:52 6 anyone else that you believed to be employed by
14:36:56 7 R.J. Reynolds?

14:36:58 8 MS. FLOWERS: Wait. Objection. Are you
14:37:00 9 speaking of R.J. Reynolds Tobacco Company
14:37:02 10 itself?

14:37:04 11 MR. NIMS: Any portion of R.J. Reynolds,
14:37:08 12 whether the tobacco company or the larger
14:37:12 13 corporation.

14:37:14 14 MS. FLOWERS: Nabisco or its agents?

14:37:16 15 MR. NIMS: Right -- well, agents we'd
14:37:18 16 probably fight about. But somebody that you
14:37:20 17 understood to be employed by R.J. Reynolds
14:37:22 18 Corporation.

14:37:24 19 THE WITNESS: Yes, sir.

20 BY MR. NIMS:

14:37:26 21 Q Whether the tobacco company or some other
14:37:28 22 part of R.J. Reynolds Corporation.

14:37:30 23 A Yes.

14:37:30 24 Q Other than the two that we've talked about,
14:37:32 25 who else did you meet?

14:37:40 1 A A gentleman in Juneau, Alaska. Do not know
14:37:48 2 his name.
14:37:50 3 Q And when did you meet him?
14:37:54 4 A On the shoot in Juneau, Alaska.
14:37:58 5 Q Do you recall anything about when that was
14:38:00 6 in between 1981 and 1987?
14:38:02 7 A No, sir. I know it was in May. But I don't
14:38:06 8 know what year. I would have to look back on my notes
14:38:08 9 or records.
14:38:08 10 Q And this gentleman whose name you don't
14:38:12 11 remember, why do you believe that he was an employee
14:38:16 12 in some fashion of R.J. Reynolds?
14:38:20 13 A Because he was introduced to us as an
14:38:24 14 employee of R.J. Reynolds at dinner in Juneau.
14:38:32 15 Q And who introduced him?
14:38:34 16 A Don't remember.
14:38:40 17 Q Do you recall who besides this gentleman and
14:38:44 18 you was present at this dinner in Juneau?
14:38:48 19 A I believe it would be all of us, crew,
14:38:50 20 talent, photographers. It exceeds 20 people. So,
14:38:58 21 yes, I would recall. But I couldn't give you all
14:39:02 22 their names. I have photographs.
14:39:04 23 Q Do you have a photograph of this person?
14:39:08 24 A I have a photograph of the crew on that
14:39:12 25 particular shoot.

14:39:14 1 Q But does the photograph include this person
14:39:16 2 that you believe to have been an employee of
3 R.J. Reynolds?

14:39:18 4 A I believe it does, yes, sir.

14:39:20 5 Q Could you make that available to your
14:39:24 6 counsel so she could provide it to me?

14:39:28 7 A I would be happy to.

14:39:28 8 Q And I certainly don't want to have another
14:39:36 9 deposition. If in fact you find the photo and if in
14:39:36 10 fact you believe it does contain the picture of this
14:39:38 11 person, can you indicate to your counsel which person
14:39:44 12 in the photo is the person?

14:39:44 13 A I believe I could do that, yes.

14:39:46 14 MR. NIMS: We would request that he look and
14:39:50 15 see if he can find that photo and that if he
14:39:50 16 does, identify such person. Could you provide us
14:39:56 17 with the photo?

14:39:56 18 MS. FLOWERS: Certainly. We'd be happy to
14:39:58 19 do that. If you could help us identify the
14:40:00 20 person, that would be appreciated. And if you
14:40:02 21 have any follow-up questions for Mr. Goerlitz,
14:40:08 22 perhaps we could do it over the phone.

14:40:10 23 MR. NIMS: That would be great.

24 BY MR. NIMS:

14:40:12 25 Q Now, when he was identified to you, do you

14:40:12 1 recall what position he held at R.J. Reynolds?
14:40:16 2 A No, I don't.
14:40:18 3 Q Did you meet him only on this one occasion
14:40:24 4 at dinner in Juneau?
14:40:26 5 A I met him through the next day as well, yes.
14:40:32 6 Q One shoot in Juneau?
14:40:34 7 A Yes, that was the only time.
14:40:44 8 Q Did he say anything during the course of
14:40:44 9 time you were with him that you recall?
14:40:46 10 A Referring to what, sir?
14:40:50 11 Q Just anything.
14:40:54 12 A Yes, sir.
14:40:54 13 Q What do you recall his having said?
14:40:56 14 A Do you want to smoke some weed?
14:41:08 15 Q Did he direct that specifically to you or to
14:41:08 16 a larger group?
14:41:10 17 A To a larger group.
14:41:12 18 Q And do you recall anything else that this
14:41:18 19 gentleman said?
14:41:22 20 A No, sir, not to me.
14:41:28 21 Q Did this gentleman in fact produce some
14:41:30 22 marijuana?
14:41:32 23 By produce, I mean take out of his pocket or
14:41:34 24 something while you observed him.
14:41:36 25 A To the best of my ability, yes, he did.

14:41:50 1 Q And did anybody else in the group take
14:41:54 2 marijuana from him?
14:41:54 3 A Yes, they did.
14:42:06 4 Q And did you take any marijuana from him?
14:42:06 5 A No, I did not.
14:42:06 6 Q How many other people do you recall having
14:42:16 7 shared marijuana with him?
14:42:20 8 A Possibly two or three.
14:42:26 9 Q Did he say anything at all about cigarettes
14:42:30 10 or tobacco that you recall during the time you were
14:42:32 11 with him in Juneau?
14:42:34 12 A I don't recall.
14:42:56 13 Q Did you ever discuss with anybody your
14:43:02 14 reaction to somebody showing up at one of your shoots
14:43:04 15 and making marijuana available?
14:43:10 16 A At the time I believed it was cool, which is
14:43:24 17 what prompted our conversation about marijuana versus
14:43:28 18 tobacco.
14:43:42 19 Q So the conversation you told me about
14:43:44 20 earlier in a van on the way back from a shoot was on
14:43:50 21 the way back from the Juneau shoot?
14:43:50 22 A It's possible.
14:44:16 23 Q Have you told me all you can recall this
14:44:18 24 gentleman having said that you heard while he was with
14:44:24 25 you in Juneau?

14:44:26 1 A No, sir.

14:44:28 2 Q Okay. What else can you remember?

14:44:32 3 A I do know that there was other substances

14:44:40 4 around the shoot location, meaning illegal

14:44:40 5 substances. I was led to believe it was cocaine.

14:44:50 6 Whether or not he produced it -- I know that he was

14:44:52 7 involved in the conversations with several people.

14:45:02 8 Other than discussion of drugs, that's about all I

14:45:08 9 recall about this gentleman.

14:45:10 10 Q And you have no recollection of what you may

14:45:14 11 have understood his title to be?

14:45:18 12 A No recollection whatsoever.

14:45:30 13 Q What was the reason for the photograph that

14:45:34 14 you believe you have of this group being together?

14:45:40 15 A On many occasions -- I believe we had 11, 12

14:45:48 16 or 13 shoots. And we would always have a wrap party

14:45:56 17 where we would celebrate a job well done, as we do in

14:45:58 18 a lot of entertaining industries. So some of the

14:46:06 19 shoots we would have a group shot; others we didn't.

14:46:12 20 It depended on the day's activity, when we were

14:46:16 21 leaving, and things like that. But some locations we

14:46:18 22 did have group photos. But they didn't always include

14:46:22 23 executives because they weren't there the whole time.

14:46:24 24 They would show up and leave, and come back, things

14:46:28 25 like that. He just happened to be in this one photo,

14:46:32 1 as I recall.

14:46:32 2 Q The other two people that you've identified
14:46:36 3 as being people you believe to have been employed by
14:46:38 4 R.J. Reynolds, Mr. Dale Zane and the gentleman in
14:46:44 5 Utah, do you have any recollection as to whether you
14:46:48 6 have photos that you believe include them?

14:46:52 7 A I do not have photos including them.

14:47:14 8 May I take a break?

14:47:20 9 MR. NIMS: Sure.

14:52:14 10 (A brief recess was taken.)

11 BY MR. NIMS:

14:52:14 12 Q You indicated when you were deposed earlier
14:52:18 13 that you had one conversation with somebody at
14:52:26 14 Reynolds in 1988 when you called to inquire about the
14:52:30 15 possibility of either doing further work for Reynolds
14:52:34 16 or for Phillip Morris. Do you recall that
14:52:38 17 conversation in your deposition?

14:52:40 18 MS. FLOWERS: Object. I would like to know
14:52:44 19 which deposition we're talking about. Steve
14:52:44 20 Sheller's deposition?

14:52:46 21 MR. NIMS: Yes. The one that was taken in
14:52:48 22 August last year.

14:52:48 23 MS. FLOWERS: Okay. I don't want to keep
14:52:52 24 interrupting on that deposition. But I want to
14:52:54 25 lodge a continuing objection to the relevance of

14:52:56 1 that deposition as to the relevance of this
14:52:56 2 case.

14:52:58 3 But answer the question, please.

14:52:58 4 THE WITNESS: I recall a conversation, yes.

5 BY MR. NIMS:

14:53:02 6 Q And as best you can recall, was that
14:53:02 7 conversation accurately characterized in your earlier
14:53:06 8 testimony?

14:53:10 9 MS. FLOWERS: Again, I'm going to have to
14:53:1010 object. Perhaps if we could show him.

14:53:1411 MR. NIMS: Sure. If he would like to
14:53:1612 read --

14:53:1613 MS. FLOWERS: Or if you could tell him,
14:53:2014 refresh his recollection.

14:53:2215 THE WITNESS: If I could see it, it might
14:53:2416 refresh my memory.

14:53:2417 MR. NIMS: I'm just trying to avoid being
14:53:2818 redundant and repetitive.

14:53:3219 THE WITNESS: It was an awful lot to read.
14:53:3420 And I'm not sure if I skimmed.

14:53:5621 MR. NIMS: By my notes, it's page 144 and
14:53:5822 145 --

14:54:5423 MS. FLOWERS: Are we correct that it stops
14:54:5624 at --

14:54:5825 MR. NIMS: No, it goes on up until about

14:55:02 1 150.

14:55:22 2 MS. FLOWERS: Why don't you rephrase the
14:55:24 3 question, and perhaps we can cut through some of
14:55:28 4 this. Are you simply asking him if this is still
14:55:30 5 his testimony on this issue?

14:55:32 6 MR. NIMS: Yes. I think it's still useful
14:55:34 7 if he'll take the time to read up to about 150.
14:55:38 8 And I'll see if there's anything you would
14:55:42 9 change. I just get annoyed in this litigation
14:55:44 10 when the same people get deposed time after time
14:55:48 11 and get asked the same questions they've already
14:55:50 12 been asked.

14:55:52 13 MS. FLOWERS: I do get annoyed too. But I'm
14:55:54 14 always cautious when we're dealing with class
14:55:56 15 action addiction cases.

14:55:58 16 MR. NIMS: I understand. We have to know
14:56:02 17 that what he's agreeing is correctly stated.

14:56:06 18 THE WITNESS: And I will tell you why --

14:56:08 19 MR. NIMS: Just a second. Are we on the
14:56:10 20 record? Okay.

14:56:14 21 MS. FLOWERS: Have you finished reading it
14:56:16 22 yet?

14:56:16 23 THE WITNESS: I knew which part I needed to
14:56:18 24 clarify in my head.

25 BY MR. NIMS:

14:56:34 1 Q Mr. Goerlitz, have you had an opportunity to
14:56:38 2 review your testimony from your deposition a year ago
14:56:38 3 from pages 144 through 150?

14:56:46 4 A Yes, sir.

14:56:46 5 MS. FLOWERS: Same objection.

6 BY MR. NIMS:

14:56:48 7 Q And does that testimony that you gave at
14:56:56 8 that time correctly characterize what you can recall
14:56:58 9 of the conversation you had in July of 1988 with a
14:57:02 10 representative of R.J. Reynolds?

14:57:04 11 A Yes, sir.

14:57:06 12 Q Have you had any conversation with anyone
14:57:12 13 you understood to be an employee of R.J. Reynolds
14:57:16 14 since that conversation in July of 1988?

14:57:26 15 A Since that conversation in 1988?

14:57:28 16 Q Correct.

14:57:28 17 A No, I have not.

14:57:32 18 Q So that's the last time you talked, so far
14:57:32 19 as you know, to anyone who was employed by Reynolds?

14:57:38 20 A As far as I recall, yes, with one exception.

14:57:44 21 Q Okay. What's the one exception?

14:57:46 22 A Stopping by the R.J. Reynolds facility in
14:57:48 23 Winston-Salem, North Carolina, just to say hello,
14:57:56 24 nothing specific about work or employment.

14:57:56 25 Q And you just talked to somebody sitting

14:58:00 1 behind the desk and said you were just stopping by?
14:58:04 2 It was a receptionist or somebody?
14:58:06 3 A Receptionist, secretary, I'm not even sure
14:58:08 4 when it was. So I wouldn't want you to believe that I
14:58:12 5 had no other conversations.
14:58:16 6 Q And when you stopped by, other than saying
14:58:16 7 hi to the receptionist, you had no substantive
14:58:20 8 conversation with any R.J. Reynolds' employee?
14:58:24 9 A I had no substantive conversations with
14:58:26 10 anyone, right.
14:58:40 11 Q Other than being deposed, which has now
14:58:42 12 happened twice, have you ever had any conversation
14:58:44 13 with any attorney that you understood to be employed
14:58:50 14 by a tobacco company?
14:58:54 15 A Employed by a tobacco company? I believe a
14:59:08 16 conversation I had with someone who claimed to be a
14:59:10 17 lobbyist for Phillip Morris was also an attorney as
14:59:14 18 well. I believe. I could be wrong in that. But I
14:59:20 19 believe he also said he was an attorney.
14:59:22 20 Q And was that the conversation you testified
14:59:24 21 about in your prior deposition where somebody from
14:59:30 22 Phillip Morris indicated maybe you could do some
14:59:32 23 lobbying for them?
14:59:34 24 A That is correct.
14:59:36 25 Q Do you have any further recollection of that

14:59:40 1 conversation that you didn't testify to last year?

14:59:44 2 A No, sir.

14:59:44 3 Q Did you ever have any discussion with any --
15:00:12 4 strike that.

15:00:14 5 Other than the conversation that you had
15:00:14 6 with this one gentleman who may have been an attorney
15:00:20 7 and lobbyist for Phillip Morris, did you ever have any
15:00:24 8 discussion with someone you understood to be employed
15:00:26 9 by a tobacco company other than R.J. Reynolds?

15:00:32 10 A May I clarify?

15:00:34 11 Q Yes.

15:00:36 12 A Prior to or after?

15:00:38 13 Q Ever.

15:00:38 14 A Yes, sir.

15:00:40 15 Q Okay. What conversations have you had with
15:00:44 16 people that you believe to have been employed by other
15:00:46 17 tobacco companies?

15:00:50 18 A Gentleman by the name of Walker Merryman
15:00:54 19 from The Tobacco Institute; Ms. Brennan Dawson Moran,
15:01:06 20 also of The Tobacco Institute, as I recall; two or
15:01:18 21 three PR people from The Tobacco Institute, and I
15:01:20 22 cannot recall their names.

15:01:26 23 Q And did all of these conversations occur at
15:01:28 24 one time or did they occur at different times?

15:01:30 25 A Different times.

15:01:30 1 Q What's the first time you can recall having
15:01:34 2 conversations with people you understood to be
15:01:36 3 employed by The Tobacco Institute?

15:01:44 4 A After I came out against the tobacco
15:01:44 5 industry in November of 1988.

15:01:50 6 Q Okay. And do you recall approximately when
15:01:54 7 you had the first conversation with someone that you
15:01:58 8 understood to be employed by The Tobacco Institute?

15:02:02 9 A I would believe within 60 days, three
15:02:08 10 months, maybe, 60 to 90 days after.

15:02:10 11 Q And what was the nature of the conversation
15:02:14 12 at that time, and with whom did you have it at that
15:02:18 13 time?

15:02:18 14 A It was with Walker Merryman. And it was in
15:02:22 15 a radio debate on air, live.

15:02:26 16 Q Did you ever have private conversations with
15:02:34 17 any representative of the tobacco company other than
15:02:38 18 in a public debate kind of setting?

15:02:40 19 A No private discussions, no, sir.

15:02:42 20 Q So other than those public debates with
15:02:52 21 representatives of The Tobacco Institute and the one
15:02:58 22 conversation you've told us about with the lawyer
15:03:00 23 lobbyist for Phillip Morris, did you have any other
15:03:04 24 conversations with people that you believed to be
15:03:08 25 employees of tobacco companies other than

15:03:10 1 R.J. Reynolds?

15:03:10 2 A Yes, sir.

15:03:12 3 Q What were they?

15:03:12 4 A I met an R.J. Reynolds employee at the
15:03:18 5 William Esty Advertising Agency in New York City who
15:03:26 6 introduced himself as some marketing rep, discussed
15:03:46 7 with me who he was and why he was there because I was
15:03:50 8 there at the same time.

15:03:52 9 Q And this was while you were still involved
15:03:54 10 in the Winston campaign?

15:03:56 11 A Yes, sir.

15:03:56 12 Q And do you recall his name?

15:04:18 13 A No, I don't.

15:04:22 14 Q He was a different person, though, than the
15:04:26 15 person you had met in Juneau and the person you had
15:04:26 16 met in Utah?

15:04:34 17 A Yes, sir.

15:04:34 18 Q And do you recall anything that he said when
15:04:52 19 you met him in New York City?

15:04:54 20 A Yes, sir.

15:04:54 21 Q And what do you recall his having said?

15:04:56 22 A He was explaining to me how they market the
15:05:04 23 photographs that their ad agency and photographers
15:05:14 24 took. He tried to explain to me the process of how
15:05:18 25 and why I was so good at my job, because I tested well

15:05:28 1 in focus groups -- didn't know what they were really.

15:05:38 2 So he just explained what focus groups were.

15:05:44 3 They showed me the photographs that they

15:05:48 4 were picking for the next series of ads to be run.

15:05:52 5 And he explained how the process works with children

15:05:58 6 associating smoking with healthy activity in high-risk

15:06:06 7 behavior -- high-risk activities, I should say, that

15:06:14 8 macho kind of thing.

15:06:14 9 Macho was thrown around an awful lot, where

15:06:22 10 I would jump off the helicopter and repel to keep

15:06:24 11 reinforcing that smoking was a healthy activity.

15:06:34 12 That's not an opinion. That was expressed because

15:06:36 13 that's what worked in focus groups in marketing

15:06:38 14 strategies, and how color was so crucial. That's why

15:06:44 15 the blue sky was so perfect with my blue eyes because

15:06:50 16 it tested well with women. It tested well that we

15:06:58 17 appeared like other actors, being a stand-in for

15:07:08 18 Harrison Ford; I resembled him. Cortland Litz

15:07:14 19 resembled Tom Selleck. Dave Stevens certainly

15:07:18 20 resembled Robert Redford in that kind of a discussion

15:07:26 21 of why and how the campaign can move to a greater

15:07:28 22 heighth of market-sharing.

15:07:34 23 He discussed with me how they tested in

15:07:38 24 malls with children. But that was primarily for color

15:07:44 25 identification, to test what colors worked better in

15:07:50 1 demographics. And I'm not saying that I know all
15:07:52 2 about demographics, but I was a part of a conversation
15:07:58 3 to where children are at a steering wheel pressing
15:08:02 4 buttons or pedals, whatever --

15:08:04 5 I forget what he said. That when they see a
15:08:10 6 color or a billboard, press a button. The machine
15:08:18 7 would, in turn, tally how many seconds the eye is on
15:08:18 8 the focus of things of this nature. And it always
15:08:24 9 related to children, with the exception of the women
15:08:28 10 in the focus groups. Never adults or grown-up, old
15:08:32 11 people. Women or children. That was the conversation
15:08:36 12 at the William Esty office while we were selecting our
15:08:40 13 macho GI Joe action shots on glaciers, doing heroic
15:08:46 14 activity, to keep impressing that this is how kids
15:08:50 15 could be like if they smoked their particular brand.

15:08:54 16 Q Were you ever present when photographs of
15:09:00 17 you were shown to any kind of a focus group?

15:09:00 18 A I was never present.

15:09:04 19 Q Were you ever present when photographs of
15:09:06 20 any Winston model were shown to a focus group?

15:09:16 21 A By definition of a focus group I'd be
15:09:16 22 guessing because my photographs were seen by lots of
15:09:20 23 people in the decision-making process at the ad agency
15:09:24 24 hired by R.J. Reynolds. And I was there for that.
15:09:28 25 But whether they would be considered experts in their

15:09:32 1 focus agenda, I don't know, if you follow what I'm
15:09:36 2 saying. They were shown to lots of people that I was
15:09:40 3 in front of.

15:09:40 4 Q As best you can recall, exactly what do you
15:09:44 5 believe this person said about focus groups?

15:09:46 6 A I recall that without them, they wouldn't
15:09:56 7 know which pictures to choose because of the number of
15:10:02 8 shots that were shot during a four- or five- or
15:10:06 9 six-day period. And the number thrown out to me was
15:10:10 10 thirty-six to thirty-seven thousand pictures to choose
15:10:14 11 from.

15:10:16 12 Q Anything else you can recall this person
15:10:18 13 having said about focus groups?

15:10:20 14 A That I favored well in most of them, which
15:10:28 15 is why I was their blue-eyed Golden Boy, things like
15:10:32 16 that. But other than that, nothing really specific
15:10:32 17 that I can recall at this point.

15:10:38 18 Q Do you recall his having said anything about
15:10:42 19 how the people who participated in focus groups were
15:10:46 20 selected?

15:10:48 21 A No, I don't recall.

15:11:00 22 Q Was there anybody present other than this
15:11:12 23 gentleman and yourself when this conversation
15:11:14 24 occurred?

15:11:18 25 A I believe there were an art director, Doc;

15:11:28 1 possibly his assistant, Peter; a couple clerical
15:11:34 2 people.

15:11:40 3 Q Did this conversation occur at the ad
15:11:42 4 agency?

15:11:42 5 A Yes, sir, in Doc's office, I assume --
15:11:50 6 Beg your pardon. I assumed it was Doc's
15:11:52 7 office because there were slides all over.

15:11:54 8 Q Did you ever talk with any representative of
15:12:00 9 the advertising agency about how the focus groups were
15:12:04 10 selected?

15:12:08 11 MS. FLOWERS: Objection. Asked and
15:12:08 12 answered. Go ahead.

15:12:10 13 THE WITNESS: I may have during the
15:12:12 14 conversation after he left as to how else I
15:12:20 15 can -- what else can I do to be numero uno or
15:12:24 16 number 1 in their selection process because of my
15:12:26 17 own greed.

18 BY MR. NIMS:

15:12:30 19 Q Do you have any recollection of ever having
15:12:36 20 discussed how focus groups were chosen with any
15:12:36 21 representative of the advertising agency?

15:12:38 22 A In general, there was conversations where I
15:12:40 23 was privy to what was being said. But I don't believe
15:12:44 24 it was being directed at me other than in the general
15:12:52 25 mood of conversation. Conversations were directed at

15:12:52 1 me when I specifically asked, What else can I do to
15:12:58 2 get more ads sold, to get more kids to smoke?

15:13:00 3 Q Do you recall anybody at the ad agency ever
15:13:04 4 saying anything that you heard about how participants
15:13:08 5 in the focus groups were selected?

15:13:16 6 A I believe that I've already answered that,
15:13:20 7 that they choose women who might be attracted to a
15:13:22 8 specific type of a young man or older man and how kids
15:13:28 9 are part of that focus group in malls because that's
15:13:32 10 where kids hang out, something like that.

15:13:38 11 I can't remember specifics other than
15:13:38 12 broad-based generalities here, sir.

15:13:40 13 Q Do you believe somebody said that they have
15:13:46 14 focus groups with kids that they show pictures of you
15:13:48 15 to?

15:13:52 16 MS. FLOWERS: Object to the form and the
15:13:52 17 characterization of the witness' testimony.

15:13:56 18 THE WITNESS: They told me that they had
15:13:58 19 machines for kids to choose color; they have kids
15:14:04 20 to choose distances; that they have a scene of a
15:14:06 21 particular color and how long it's in their
15:14:08 22 head. But there was never any conversation where
15:14:12 23 my picture was shown to a child, possibly to a
15:14:16 24 young woman.

25 BY MR. NIMS:

15:14:16 1 Q I mean, you would be astonished, would you
15:14:20 2 not, if any tobacco company were trying to get a focus
15:14:24 3 group of kids and showing your picture to it?

15:14:26 4 A Sure, I would be astonished at that; but
15:14:30 5 not, as I testified, that it was mostly with color and
15:14:32 6 with the blue skies and things like that which is why
15:14:36 7 I think I've answered the question to the best of my
15:14:38 8 ability.

15:14:40 9 Q Did you ever see one of these machines in a
15:14:46 10 mall that were used to see how kids react to color?

15:14:48 11 A I've never seen one, no.

15:14:50 12 Q Anybody ever identify for you a single mall
15:15:00 13 anywhere in the United States where such a machine was
15:15:02 14 placed by a tobacco company to see how kids react to
15:15:06 15 the color?

15:15:06 16 A No one gave me a specific location, no, sir;
15:15:12 17 nor did I ask.

15:15:14 18 Q The Winston campaigns that you participated
15:16:06 19 in, did you ever find out where your pictures were
15:16:12 20 actually used, where the ads appeared?

15:16:16 21 A Yes, sir.

15:16:18 22 Q And what did you find out in that regard?

15:16:20 23 A They were running all over where allowed.
15:16:30 24 They were next to candy on the display stands with my
15:16:36 25 picture. I'm talking about the cigarettes themselves

15:16:40 1 were next to the candy with my picture. They were on
15:16:44 2 push/pull door stickers at children's eye level when
15:16:48 3 you go in and out of the stores. They appeared on
15:16:50 4 clocks. They appeared on vending machines, every
15:16:56 5 possible major magazine that would attract youth.

15:17:02 6 Q Identify for me all the magazines that you
15:17:08 7 believe your picture appeared in Winston ads in that
15:17:08 8 magazine.

15:17:10 9 A Rolling Stones, Motor Trend, Outdoor Life,
15:17:30 10 Playboy, Penthouse, Life, Time, Newsweek, Cycling,
15:17:54 11 Cycles World -- Cyclor World, something like that,
15:18:00 12 Sports Illustrated, Popular Mechanics, a few women's
15:18:10 13 magazines that I cannot recall, billboards, sports
15:18:28 14 stadiums in the form of computerized generated
15:18:34 15 visuals, taxicabs, entries and exits of subways, in
15:18:58 16 subways, billboards in every part of the country with
15:19:04 17 the exception of the minority areas, meaning the
15:19:10 18 projects, ghetto, if you will, any place where white
15:19:18 19 Americans reside, some African American, but they --
15:19:26 20 it was minimal with my picture. That's all I recall.
15:19:32 21 I'm sure there was others.

15:19:46 22 Q Okay. Do you have firsthand knowledge of
15:19:54 23 anywhere that an ad with your picture appeared in the
15:20:00 24 State of Oklahoma?

15:20:02 25 MS. FLOWERS: Objection. Asked and

15:20:02 1 answered.

15:20:04 2 THE WITNESS: Yes.

3 BY MR. NIMS:

15:20:04 4 Q And what firsthand knowledge do you have of
15:20:08 5 it appearing in a location in Oklahoma?

15:20:12 6 A I just saw it.

15:20:16 7 Q I'm sorry. I don't understand. What do you
15:20:20 8 mean you just saw it? You were in Oklahoma and saw
15:20:22 9 it?

15:20:24 10 A Yes, sir.

15:20:26 11 Q Where did you see and what did you see in
15:20:26 12 Oklahoma?

15:20:28 13 A My picture in a vending machine in a bowling
15:20:34 14 alley two weeks ago.

15:20:42 15 Q A picture, I take it, that was taken over
15:20:50 16 ten years ago?

15:20:52 17 A Yes, sir.

15:20:52 18 Q You saw one of your old pictures on a
15:20:56 19 vending machine in a bowling alley in Oklahoma two
15:21:00 20 weeks ago?

15:21:00 21 A Yes, sir.

15:21:00 22 Q And where was that bowling alley?

15:21:04 23 A Somewhere in Oklahoma.

15:21:06 24 Q You don't remember the city?

15:21:08 25 A I believe it was Enid. But I could be

15:21:12 1 wrong. I traveled to nine cities in a week.

15:21:18 2 Q Do you have any other firsthand knowledge of
15:21:22 3 where your picture appeared in the State of Oklahoma?

15:21:24 4 MS. FLOWERS: Same objection.

15:21:30 5 THE WITNESS: Firsthand?

6 BY MR. NIMS:

15:21:32 7 Q Yes.

15:21:34 8 A No.

15:21:34 9 Q Do you have any other non-firsthand
15:21:38 10 knowledge but information that you were told about
15:21:42 11 where your picture appeared in the State of Oklahoma?

15:21:44 12 A Yes, sir.

15:21:46 13 Q What information do you have that you were
15:21:48 14 told about that?

15:21:50 15 A I was recognizable in the State of Oklahoma
15:21:54 16 when I did a press conference in governor's rally on
15:22:02 17 the State of Oklahoma steps last year in 1988 -- in
15:22:08 18 1998? Excuse me. '97. Where am I? It was last
15:22:16 19 year.

15:22:16 20 Q I want to make sure I understand how it
15:22:20 21 relates to your belief about where your ad ran in
15:22:24 22 Oklahoma. You did a governor's rally last year
15:22:28 23 somewhere in Oklahoma, I take it?

15:22:32 24 A In Oklahoma City.

15:22:32 25 Q And this was some kind of an antitobacco

15:22:36 1 rally, I assume?

15:22:40 2 A It was pro health, children making good

15:22:42 3 choices.

15:22:42 4 Q And what was your role in it?

15:22:44 5 A As a new role model for children.

15:22:52 6 Q I mean, did you make some kind of a speech?

15:22:54 7 A Yes, sir.

15:22:54 8 Q And while you were at this rally something

15:23:02 9 happened, I take it, that gives you reason to believe

15:23:06 10 that ads with your face appeared in Oklahoma. And

15:23:10 11 what happened that causes you to believe that?

15:23:14 12 A People came up and said that we recognize

15:23:18 13 you from your ads that you did with Winston.

15:23:30 14 Q Anything else?

15:23:38 15 A Anything else happened or any firsthand

15:23:40 16 knowledge?

15:23:42 17 Q Well, if there's any other firsthand

15:23:42 18 knowledge, I certainly want to know about it.

15:23:46 19 A No. I haven't seen anything more than what

15:23:48 20 I've already told you, I believe.

15:24:10 21 Q What is the age in Oklahoma, if you know, at

15:24:12 22 which people are allowed to legally purchase

15:24:16 23 cigarettes?

15:24:16 24 MS. FLOWERS: Objection. Beyond the scope

15:24:22 25 of the witness' expertise. Go ahead and answer.

15:24:24 1 THE WITNESS: 18 legally.

2 BY MR. NIMS:

15:24:40 3 Q Do you believe that ads with your picture
15:24:46 4 appeared in any magazine in Oklahoma, the principal
15:24:52 5 readership for which were individuals younger than the
15:24:56 6 age of 18?

15:24:56 7 MS. FLOWERS: Objection. Asked and
15:24:56 8 answered.

15:25:00 9 THE WITNESS: I wouldn't have any idea. I
15:25:02 10 would assume. But I wouldn't confirm.

11 BY MR. NIMS:

15:25:04 12 Q Well, let me ask, are there any magazines
15:25:08 13 that you are aware of the principal readership of
15:25:16 14 which are individuals below the age of 18?

15:25:16 15 MS. FLOWERS: Asked and answered.

15:25:18 16 THE WITNESS: Yes, sir.

17 BY MR. NIMS:

15:25:18 18 Q And what magazines are those?

15:25:20 19 A Probably Rolling Stones and Playboy and
15:25:26 20 Penthouse.

15:25:30 21 Q What is the basis for your belief that those
15:25:32 22 three magazines have their principal readership among
15:25:36 23 people younger than the age of 18?

15:25:38 24 MS. FLOWERS: I'm going to have to object
15:25:40 25 because this witness already stated he's not an

15:25:46 1 expert in demographics and certainly not being
15:25:46 2 offered on magazine readership.

15:25:50 3 With that said, give him what you know.

15:25:52 4 MR. NIMS: I'm not asking merely for his
15:25:54 5 opinion. I'm merely asking for why he believes
15:25:56 6 his ads appeared in magazines, the principal
15:26:00 7 readership of which are people under 18. And so
15:26:02 8 I want to know the basis for his belief that
15:26:08 9 those three magazines fit that profile.

15:26:10 10 MS. FLOWERS: I think that that was your
15:26:10 11 characterization of what magazines had the
15:26:18 12 readership and that he was just giving a guess.

15:26:26 13 You can go ahead and continue to guess
15:26:26 14 unless you have some substantive knowledge about
15:26:28 15 it.

15:26:30 16 THE WITNESS: To answer your question, I was
15:26:30 17 under the age 18 once; and those are the three
15:26:34 18 that I rallied up to. Or something like
15:26:40 19 rolling -- it's just an opinion, sir. Maybe I
15:26:46 20 don't understand the scope of your question
15:26:46 21 either.

22 BY MR. NIMS:

15:27:02 23 Q I think we've probably covered this, but let
15:27:06 24 me make sure. Other than in magazines which may have
15:27:14 25 been distributed in Oklahoma and a vending machine in

15:27:20 1 a bowling alley which has an old picture of you still
15:27:28 2 on it in Enid, are there any other places where you
15:27:28 3 know that your picture in a Winston ad appeared in the
15:27:34 4 State of Oklahoma?

15:27:36 5 A No.

15:27:36 6 MS. FLOWERS: Hold on. You're going to have
15:27:38 7 to give me time to lodge objections, please. If
15:27:42 8 I could assert one. Object to the
15:27:46 9 characterization of the witness' testimony. I
15:27:46 10 believe he gave a long list of national types of
15:27:48 11 advertisement.

12 BY MR. NIMS:

15:28:34 13 Q During the period in which you were modeling
15:28:40 14 for Winston ads, were you provided at any time with
15:28:46 15 any documents that you understood came from
16 R.J. Reynolds Company?

15:28:52 17 This is during that period of time, not what
15:28:54 18 you may have gotten later since you have become a
15:29:02 19 public spokesperson; but during that period of time,
15:29:06 20 did you get any documents from R.J. Reynolds?

15:29:12 21 A Other than my contract with R.J. Reynolds,
15:29:12 22 no.

15:29:12 23 Q You weren't on any distribution list of any
15:29:18 24 kind where you received any kind of marketing material
15:29:20 25 or advertising material?

15:29:24 1 A Distribution list, I don't understand.
15:29:26 2 Q A list of people within R.J. Reynolds who
15:29:30 3 were getting advertising marketing type documents, if
15:29:36 4 there was such a distribution list, you weren't on it,
15:29:38 5 I take it?
15:29:38 6 A If there was a list, I wasn't on it, no.
15:30:32 7 Q As of when you were deposed last year, you
15:30:32 8 identified yourself as an ex-smoker who lapsed every
15:30:38 9 now and then. How would you identify yourself today?
15:30:46 10 Have you totally quit smoking today?
15:30:46 11 A I have lapsed.
15:30:50 12 Q How often do you lapse?
15:30:50 13 A It varies. Maybe once every three, four or
15:30:56 14 five months depending upon certain factors.
15:31:00 15 Q And when you lapse, do you have a cigarette,
15:31:04 16 or do you for some period of time start smoking
15:31:08 17 regularly?
15:31:10 18 A I have a drag or a couple hits maybe, but
15:31:16 19 no, I do not go back to regular smoking.
15:31:28 20 Q Since you quit smoking back in I believe it
15:31:30 21 was 1988 -- does that sound correct?
15:31:36 22 A That's correct.
15:31:36 23 Q Since you quit smoking back then, has there
15:31:40 24 ever been a day on which you smoked more than a single
15:31:44 25 cigarette?

15:31:44 1 A Oh, certainly, yes, sir.

15:31:46 2 Q And how often has that occurred?

15:31:48 3 A Ten times, twelve times possibly. I don't
15:31:56 4 really know. Not to my -- I know it's ten to twelve.

15:32:08 5 Q Is there any brand today that you use when
15:32:10 6 you occasionally lapse?

15:32:18 7 A No specific brand. It's usually OP's.

15:32:50 8 MR. NIMS: Why don't we take five minutes,
15:32:52 9 and I'll see if I've covered everything I want to
15:41:54 10 cover.

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13 (At 2:41 p.m. the deposition was adjourned.)

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1 STATE OF FLORIDA
2 COUNTY OF PALM BEACH

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6 I, Mary R. Desiderio, the undersigned Notary
7 Public, in and for the State of Florida, hereby
8 certify that DAVID GOERLITZ personally appeared before
9 me and was duly sworn.

10

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12

13 WITNESS my hand and official seal this 29th
14 day of November, 1998.

15

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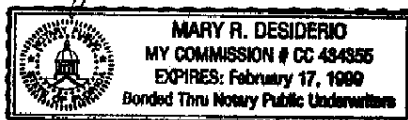
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Mary R. Desiderio



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C E R T I F I C A T E

1

2

3 STATE OF FLORIDA

4 COUNTY OF PALM BEACH

5

6 I, Mary R. Desiderio, Registered Professional
7 Reporter, do hereby certify that I was authorized to
8 and did stenographically report the foregoing
9 deposition; and that the transcript is a true and
10 correct transcription of the testimony given by the
11 witness.

12

13 I further certify that I am not a relative,
14 employee, attorney or counsel of any of the parties,
15 nor am I a relative or employee of any of the parties'
16 attorney or counsel connected with the action, nor am
17 I financially interested in the action.

18

19

20 Dated this 29th day of November, 1998.

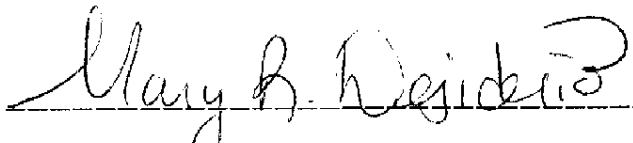
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Mary R. Desiderio
Registered Professional Reporter

INTERIM COURT REPORTING
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STATE OF FLORIDA
COUNTY OF PALM BEACH

I, DAVID GOERLITZ, hereby certify that I have read the foregoing transcript of my deposition and that the statements contained therein, together with any additions or corrections made on the attached Errata Sheet, are true and correct.

Dated this _____ day of _____, 1998.

The foregoing certificate was subscribed to before me this _____ day of _____, 1998, by the witness who has produced a _____ as identification and who did not take an additional oath.

Notary Public

INTERIM COURT REPORTING
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